



## Procedures for Student Non-Academic Misconduct Investigations

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Parent Policy Links:	<i>Student Non-Academic Misconduct Policy</i> <i>Sexual Violence and Misconduct Policy</i>		
Procedure Reference	SCPR02_2206R_AD/DS		
Procedure Sponsor:	Dean of Students		
Procedure Contact:	Dean of Students		
Stakeholders:	Students, Employees, Board of Governors		
Approved by:	Executive Team		
Effective Date:	June 30, 2022		
Last reviewed:	June 2023	Scheduled review date:	June 2028

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### 1. Purpose

The purpose of the Student Misconduct Investigation Procedure is to establish standards and processes that will be enacted when student conduct fails to promote a positive, safe, and respectful learning environment. When a complaint of misconduct, including a complaint of Sexual Violence and Misconduct, is received, the College will determine if the Policy has been violated and apply corrective measures as needed.

### 2. Scope and Application

- 2.1 This Procedure applies to Students who have been accused of prohibited conduct under the Student Non-Academic Misconduct Policy and to Students accused of Sexual Violence or Misconduct under the Sexual Violence and Misconduct Policy.
- 2.2 This Procedure will govern the investigation or resolution of a Complaint under these Policies.
- 2.3 Any person who has experienced Sexual Violence and Misconduct or any criminal behaviour has the right to pursue criminal or civil legal avenues whether or not they choose to file a Complaint or make a Disclosure under the Policies.
- 2.4 All Procedures will be undertaken in compliance with principles of Procedural Fairness and will appropriately protect the rights of both the Complainant and the Respondent.

### 3. Procedures

#### *Initial Review of Complaint*

- 3.1 When a Complaint of misconduct is received, the Dean of Students (the "Dean") will normally respond to the Complainant within three (3) business days. The Dean will acknowledge the receipt of the Complaint, inform the Complainant of the initial review procedures and may request further information.
- 3.2 The Dean will determine under which Policy (if any) the Complaint is covered. The Complaint may be dismissed if:
  - a) there is insufficient information;
  - b) the information does not meet the criteria of an infraction; or
  - c) the complaint is frivolous, vexatious, or brought in bad faith.
- 3.3 The Complainant will be notified in the event a Complaint is dismissed. Dismissal of a Complaint cannot be Appealed.
- 3.4 Where a probable policy violation is identified, the Dean will determine if the misconduct is a minor or major and infraction of the Student Non-Academic Conduct Policy, or a violation of the Sexual Violence and Misconduct Policy and will implement relevant procedures. **All Formal Complaints filed under the Sexual Violence and Misconduct Policy will be treated as Major Infractions.**
- 3.5 Upon review of the Complaint, the College, at its discretion, may impose Interim Measures for the duration of the Investigation and review process to protect the safety of individuals in the College community. Interim Measures may include, but are not limited to:
  - a) safety plans for affected Students or Employees as necessary;
  - b) alteration of the academic schedule of any Student involved in a reported violation of the Student Non-Academic Misconduct Policy, or the Sexual Violence and Misconduct Policy;
  - c) alterations of the work schedule or work assignment of any Employee involved in a reported violation of the Policy;
  - d) a No-Contact Undertaking or No-Contact Direction;
  - e) temporary, non-disciplinary, leave of absence of the Respondent; and
  - f) any other interim measure as may be determined by the College to support the safety of all parties involved.
- 3.6 When a Student's conduct could be considered a violation of both an administrative and academic policy (e.g. Academic Integrity) the Program Dean or Continuing Studies & Corporate Training Director, and the Dean of Students, will determine jointly which Policy applies to the specific actions and will apply each Policy as appropriate.

#### *Process for Minor Infraction (Not applicable to Complaints of Sexual Violence or Misconduct)*

- 3.7 The Dean of Students will normally send a request within three (3) business days of acknowledging receipt of the Complaint to schedule a meeting with the Complainant. The purpose of the meeting is to allow the Complainant to provide any additional information and to allow the Dean to explain the relevant procedures and ask any clarifying questions.
- 3.8 The Dean will subsequently request a meeting with the Respondent within three (3) business days following the meeting with the Complainant. The purpose of the meeting is to allow the Respondent to respond to the Complaint.

- 3.9 The Complainant and Respondent will be provided with a link to *the Student Non-Academic Misconduct Policy and Procedures* and information on the role of confidentiality in the review process.
- a) Responses to minor infractions: if a determination is made that misconduct occurred and constitutes a minor infraction, the Dean may implement any one, or a combination of, the following:
    - i) Initiate a meeting between the parties involved to identify a mutually agreed upon *resolution* to the incident. If a resolution is agreed to by all parties and compliance is achieved over an agreed to period-of-time, there will be no further action.
    - ii) Assign sanctions to the Respondent that are appropriate to the incident and allowable under Sanctions for Minor Infractions set out in these Procedures.
  - b) Appeals: sanctions for minor infractions may not be appealed.

***Process for a Major Infraction***

- 3.10 If a determination is made that the misconduct constitutes a Major Infraction, the Dean of Students will appoint an investigator to conduct an unbiased fact-finding and information-gathering process with all parties involved.
- a) The Complaint may be investigated internally, or the College may engage an external investigator in circumstances deemed appropriate by the College.
  - b) Except in cases involving Complaints of Sexual Violence and Misconduct, the College may unilaterally proceed with an investigation even where a Complainant elects not to proceed with a Complaint or where parties have reached a resolution through mediation. See *Procedures for Filing a Complaint of Sexual Violence or Misconduct*.
  - c) The Complainant will be provided with a link to the *Student Non-Academic Misconduct Policy and Procedures* or the *Sexual Violence and Misconduct Policy and Procedures* and provided with information on the role of the confidentiality during the investigation.
  - d) The Investigator will normally meet with a Complainant within three (3) business days of the Complaint being assigned to the Investigator by the Dean.
  - e) Following the meeting with the Complainant, the Investigator will provide written notice to the Respondent of the Complaint. The Respondent will be provided with a link to the *Student Non-Academic Misconduct Policy and Procedures* or the *Sexual Violence and Misconduct Policy and Procedures* and provided with information on the role of confidentiality during the investigation.
  - f) The Respondent may be asked to provide a written response to the Complaint and to meet with the Investigator.
  - g) The Investigator may obtain written reports, request and review relevant documentation and/or meet with any witnesses who may have relevant information.
  - h) All individuals interviewed during an investigation process may have an appropriate support person present at the interview, such as a Student Union representative or friend ("Support Person"), but the individual must provide their own evidence. The support person must not be in a position of apparent or actual conflict of interest and must agree to keep confidential the information disclosed during the interview.
- 3.11 Investigations will be conducted in as timely a manner as possible, usually completed within twenty-five (25) business days of the assignment of the Complaint to the Investigator.

- 3.12 Investigations may not be conducted or may be deferred under any of the following circumstances:
- a) There is lack of clarity about the nature of the Complaint.
  - b) There is concern for the safety, well-being, or academic status of the parties involved or concern for the employment of the Complainant.
  - c) If the Respondent's well-being is of concern and the Dean requests that a Case Management Group be convened.
  - d) Criminal proceedings are initiated and in process.
- 3.13 The Investigator will provide a confidential report to the Dean that includes:
- a) A description of the incident(s)/conduct;
  - b) A summary of the Investigator's process, analysis and findings; and
  - c) The Investigator's opinion as to whether, on the balance of probabilities, there has been a violation of the Policy under which the investigation is being conducted.
- 3.14 If there is sufficient evidence of a violation of the Policy (or Policies) under which the Complaint is being investigated, the Dean will:
- a) Communicate the investigation outcome to the Complainant and Respondent; and
  - b) Request the Student Conduct Committee convene a Hearing Panel; or
  - c) Where appropriate, advise the Respondent of the option to request mediation. A Respondent has 3 business days after being notified of the outcome of the Investigation to make a request for mediation.
    - i) Where the Respondent requests mediation, the Complainant will have three (3) business days to choose to participate in mediation or decline to do so. If the Complainant agrees to mediation, the Dean will coordinate an appropriate mediation.
    - ii) If the Complainant does not agree to participate in a mediation, or if an agreed upon mediation is not successful, the Complaint is referred to the Student Conduct Committee to convene a Hearing.

#### **4. Student Conduct Committee**

- 4.1 The Student Conduct Committee consists of:
- a) 2 Program Deans
  - b) Director Continuing Studies/Corporate Training (CSCT)
  - c) 2 Directors from Leadership Council
  - d) 4 Student Representatives (3 from OCSU, 1 from VSAOC)
  - e) The Dean of Students (Chair)
- 4.2 The Student Conduct Committee will participate in regular training sessions including, but not limited to review of policy and procedures, due process, how to ask appropriate questions, decision making, confidentiality & privacy, review of precedent and case studies.
- 4.3 The Chair of the Student Conduct Committee will convene a Hearing Panel from the membership of the Student Conduct Committee within 10 business days of the Chair receiving the Investigator's report. The Hearing panel will consist of:
- a) 1 Program Dean or Director CSCT
  - b) 1 Director from Leadership Council

- c) 1 Student Representative
  - d) Chair
- 4.4 No member of the Hearing Panel will be a member of the academic program in which the Student is enrolled and all members must confirm that they do not have a conflict of interest based on previous knowledge of the Respondent, Complainant, or any other party associated with the investigation.

## 5. Hearing Panel Procedures

- 5.1 The Hearing Panel will review the Investigator's Report and the investigation material.
- 5.2 In cases being reviewed under the Sexual Violence and Misconduct Policy, the Complainant's name or identifying information may be redacted to protect privacy.
- 5.3 The Respondent, Complainant and all witnesses will be asked to appear individually to make a statement to the Hearing Panel. Complainants in a Sexual Violence and Misconduct procedure will not be required to appear in person.
- a) In cases where important issues are fact-sensitive, the Respondent may provide questions to the Panel if cross-examination of witnesses is deemed appropriate.
  - b) The Respondent and/or the Complainant may be accompanied by a Representative or Support Person. The Representative or Support Person should not speak on behalf of the Complainant or the Respondent.
- 5.4 All parties are sent written notice of the date, time, and location of the hearing with a statement of the purpose of the hearing.
- 5.5 The Chair will convene a pre-hearing meeting with the Hearing Panel to review procedure and to set expectations for the hearing.

## 6. Hearing Procedure

- 6.1 The Chair will:
- a) introduce the panel;
  - b) state the authority for the panel under the Student Non-Academic Misconduct Policy or the Sexual Violence and Misconduct Policy;
  - c) outline the process for the hearing;
  - d) set expectations for conduct during the hearing;
  - e) manage meeting protocols and determine when to invite the Complainant, Respondent and witnesses to meet with the Panel;<sup>1</sup>
  - f) protect the confidentiality of all involved in the Hearing;
  - g) ask the Complainant and Respondent to introduce themselves and make an opening statement;
  - h) invite questions from panel members;

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<sup>1</sup> Hearings to review Complaints of Sexual Violence and Misconduct will not require the Complainant to attend in person. Cross examination questions from the Respondent will be directed to the Investigator. Where the Investigator cannot answer, the Investigator will contact the Complainant for a response. All answers will be forwarded by the Investigator back to the Hearing Panel. The Respondent must pose all of their questions during the Hearing and cannot pose new questions after receiving the answers from the Complainant via the Investigator.

- i) ask witnesses for statements and to respond to panel questions;
  - j) ask the Respondent if there is a final statement and close the hearing; and
  - k) facilitate deliberations by the Hearing Panel.
- 6.2 Each voting member of the Hearing Panel votes on all Panel decisions. There are no abstentions and votes are in camera. The Chair does not vote.
- 6.3 Written and audio records will be made of each hearing that is conducted.
- 6.4 The Hearing Panel may issue the following decisions based on the preponderance of evidence:
- a) Determine that on the Balance of Probabilities, the Respondent did not violate the Student Non-Academic Misconduct Policy or the Sexual Violence and Misconduct Policy.
  - b) Determine that on the Balance of Probabilities, the Respondent violated the Student Non-Academic Misconduct Policy or the Sexual Violence and Misconduct Policy, and impose sanctions.

## 7. Determinations of the Hearing Panel

- 7.1 If it is determined that the Respondent has *not* violated the Non-Academic Misconduct Policy or the Sexual Violence and Misconduct Policy, communication about the decision to the Respondent and the Complainant will be issued by the Chair and will include:
- a) a brief summary of the information provided by the Complainant and the Respondent;
  - b) a brief summary of other relevant information collected during the investigation and Hearing; and
  - c) reasons explaining the decision.
- 7.2 If it is determined that the Respondent *has* violated the Policy, communication about the decision to the Respondent will include:
- a) a brief summary of the information provided by the Complainant and the Respondent;
  - b) a brief summary of other relevant information collected during the investigation and Hearing;
  - c) reasons for the decision;
  - d) remedies or Sanctions the Hearing Panel will impose; Sanctions may include any one or combination of the Sanctions for Major Infractions set out in these Procedures,
  - e) the deadline for complying with sanctions;
  - f) the consequences for non-compliance with the sanctions; and,
  - g) an explanation of the process to Appeal all or part of the decision to the Office of the Provost and Vice President, Academic.
- 7.3 If it is determined that the Respondent *has* violated the Policy, communication about the decision to the Complainant will include:
- a) a brief summary of the information provided by the Complainant and the Respondent;
  - b) a brief summary of other relevant information collected during the investigation and Hearing;

- c) reasons for the decision;
- d) information about only those Sanctions imposed on the Respondent which have a direct impact on future interactions between the Respondent and the Complainant; and
- e) an explanation of the process to Appeal all or part of the decision to the Office of the Provost and Vice President, Academic.

## 8. Suspension and Expulsion

- 8.1 A Hearing Panel may make a recommendation to the President of the College that a student be suspended or expelled.
- 8.2 If the President does not accept a recommendation for Suspension or Expulsion, the matter will be returned to the original Hearing Panel to determine appropriate actions.
- 8.3 If the President does accept the recommendation for Suspension or Expulsion, a student suspended or expelled may file an Appeal to the Okanagan College Board of Governors.
- 8.4 An Appeal must be filed with the Board Secretary within ten (10) business days of an email of the President's decision being sent from the Office of the President to the Respondent. An Appeal must clearly state the reasons for the Appeal. Appeals will be heard only on the grounds detailed in *Appeals - section 10.1*.

## 9. Sanctions

- 9.1 When a determination is made, pursuant to the applicable procedures set out herein, that misconduct occurred, Sanctions may be applied to the Respondent.
- 9.2 The Dean or designate is responsible to oversee the implementation, monitoring, and completion of Sanctions.
- 9.3 Sanctions for minor infractions may include any one, or combination of, the following:
  - a) an apology;
  - b) a Behaviour Contract;
  - c) probation;
  - d) restrictions;
  - e) reparation; and/or
  - f) a written warning.
- 9.4 Sanctions for Major Infractions include may any one or combination of the following:
  - a) Probation;
  - b) Restrictions;
  - c) Reparations;
  - d) Developmental and Educational Assignment;
  - e) Community Services;
  - f) Support Agreement;
  - g) Course De-Registration;
  - h) Forfeiture of Awards;
  - i) Suspension; and/or
  - j) Expulsion.

## 10. Appeals

- 10.1 Appeals may be filed by Respondents who are found responsible for Major Infractions, or by Complainants, on the following grounds:
- There is new information that was not available during the original investigation or at the Hearing.
  - The severity of the Sanction was not commensurate with the incident.
  - There is material departure from the Procedures outlined in these procedures, which resulted in lack of Procedural Fairness.
- 10.2 An Appeal must be filed in writing or in a verbal report to the Office of the Provost and Vice President, Academic within ten (10) business days of the decision of the Hearing Panel having been e-mailed to the Respondent and the Complainant.
- 10.3 All Sanctions or interim Sanctions applied during the Investigation and Hearing Panel process remain in effect during the Appeal process.
- 10.4 The Provost and Vice President, Academic determines whether an Appeal meets the criteria stipulated in *Appeals – section 10.1 above*. Appeals will be granted if, in the opinion of the Provost and Vice President Academic, the request meets at least one of the above criteria and if, on the balance of probabilities, there is sufficient reason to question the initial decision.

### ***Appeals Panel***

- 10.5 When an Appeal of a Hearing Panel decision is granted, the Provost and Vice President, Academic will convene an Appeals Panel within 10 (ten) business days, from members of the Student Conduct Committee who did not participate in the original Hearing Panel.
- 10.6 The Appeals Panel will consist of:
- a Program Dean, or the Director, CSCT;
  - a Director from Leadership Council;
  - a Student representative; and
  - the Vice President, Academic and Provost (Chair).
- 10.7 No member of the Appeals Panel will be a member of the academic program in which the Student is enrolled, and all members must confirm that they do not have a conflict of interest based on previous knowledge of the Respondent or of any other party associated with the investigation.
- 10.8 The Appeals Panel reviews the Investigator's Report, the investigation material, and the appeal submissions.
- 10.9 Each voting member of the panel votes on the decision. There are no abstentions.
- 10.10 Written and audio-recording records are made of each Appeal Panel review.



### ***Determinations of the Appeals Panel***

- 10.11 The Appeal Panel may issue the following decisions based on the preponderance of evidence:
- a) Deny the appeal.
  - b) Uphold the original decision and sanctions as stipulated following the original investigation.
  - c) Request the investigation be re-initiated or the Hearing Panel be re-convened for failure to follow process.
  - d) Modify the sanctions.
- 10.12 For clarity, an Appeals Panel may make, or uphold, a recommendation to the President of the College that a student be suspended or expelled.
- 10.13 If the President does not accept a recommendation from the Appeals Panel for Suspension or Expulsion, the matter will be referred back to the Appeals Panel to determine alternative Sanctions.

## **11. Appeal of Suspension and Expulsion to Board of Governors**

- 11.1 Where a recommendation for Suspension or Expulsion has been made, or upheld, by the Appeals Panel, and accepted by the President, a student suspended or expelled may file an Appeal to the Okanagan College Board of Governors.
- 11.2 An Appeal must be filed with the Board Secretary within ten (10) business days of an email of the President's decision being sent from the Office of the President to the Respondent. An Appeal must clearly state the reasons for the Appeal. Appeals will be heard only on the grounds detailed in this Procedure under *Appeals - section 10.1*.

## **12. Support Measures - Accommodation & Counselling**

- 12.1 Any student involved in these procedures may request accommodation regarding their participation in any part of the conduct review process by contacting the Office of Student Services. Accommodation will be provided in accordance with the Human Rights Code – British Columbia.
- 12.2 A Student who has experienced Sexual Violence and Misconduct may require an academic accommodation (for example, exam deferral, an extension on an assignment, withdrawal from a class, relocation of studies to another campus or from home, etc.). The College's Counsellors and Accessibility Services Coordinators will facilitate academic accommodation requests with the appropriate Dean's office so that individuals who experience Sexual Violence and Misconduct do not have to repeat their disclosures to other College employees
- 12.3 A Student requesting an academic accommodation under the Sexual Violence and Misconduct policy is not required to file a Complaint of Sexual Violence and Misconduct to be considered for an academic accommodation.
- 12.4 Students have access to counselling through Counselling Services.

## **13. Change of Status**

- 13.1 A student who is accused of a violation of the Student Non-Academic Misconduct Policy or the Sexual Violence and Misconduct Policy, who withdraws from the College or who

completes their program of study may be prevented from registering in future classes or their credentials may be withheld until the investigation and review process is completed.

#### 14. Records

- 14.1 All information and records pertaining to a Complaint, Investigation, Sanction, or Appeal under the **Student Non-Academic Misconduct Policy** or under the **Sexual Violence and Misconduct Policy** are kept in accordance with the Freedom of Information and Protection of Privacy Act.
- 14.2 Records are maintained in the Student Services office separate from student academic files. The student conduct file of an expelled student is retained indefinitely.
- 14.3 Records of Suspension or Expulsion are included on a student's official College transcript.

#### 15. Report

- 15.1 The Dean of Students compiles an annual report that provides summary information of the number of Complaints filed, type of conduct reported, sanctions applied, number of appeals filed and the outcome of appeals. The President will report to the Board of Governors on an annual basis.

#### 16. Related Acts and Regulations

*College and Institute Act*  
*Freedom of Information and Protection of Privacy*  
*Sexual Violence and Misconduct Policy Act*

#### 17. Supporting References, Policies, Procedures and Forms

*Involuntary Withdrawal Policy*  
*Privacy Policy*  
*Student Wellbeing and Support Policy*  
*Violent and Threatening Behaviour Policy*

#### 18. History / Revisions

Date	Action
2023-08-15	<i>Non-substantive update: job titles of Leadership Council and administrators.</i>
2022-06-29	<i>Approval by Executive Team: Procedures for Student Non-Academic Misconduct Investigations</i>